

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKMAERSK LINE,
_____X

07 Civ 8756 (STEIN)

Plaintiff,

- against -

USCA-SEABELL, INC.,
_____X

Defendant.

MEMORANDUM OF LAWFacts

This action was commenced seeking \$387,025.19 in unpaid ocean freight, now reduced to \$243,662.22. Defendant was served on October 23, 2007, and failed to answer.

POINT ITHE COURT MAY ENTER
A DEFAULT JUDGMENT

Under Fed.R.Civ.P. 55(b)(2), the Court may enter a judgment by default, so long as the Court, in its discretion, can ascertain from the facts set forth in the Complaint that a judgment is warranted. Au Bon Pain v. Arctec, Inc., 653 F.2d 61, at 65 (2d. Cir. 1981). Plaintiff submits that the affidavit of Dave Johnson, together with Schedule A to the motion, the Complaint and Schedule A to the Complaint satisfies the requirement of sufficient proof of the accuracy of the allegations of the Complaint.

POINT II
INTEREST AT 6% IS APPROPRIATE

"It is firmly established that [a]llowance of pre-judgment interest in admiralty [actions] . . . should be granted in the absence of exceptional circumstances, and that the rate of pre-judgment interest is within the broad discretion of the district court." Mentor Ins. Co. (U.K.) Ltd. v. Brannkasse, 996 F.2d 506, 520 (2d. Cir. 1993) (internal citations and quotations omitted.) Plaintiff submits that 6% from the dates of the bills of Lading is proper.


CONCLUSION

Judgment by default, with interest, is appropriate.

Dated: New York, New York
November 16, 2007

LAW OFFICES OF
ALBERT J. AVALLONE & ASSOCIATES

By


Albert J. Avallone - AA1679
Attorneys for Plaintiff
MAERSK, LINE
551 Fifth Avenue, Suite 1625
New York, NY 10176
(212) 696-1760

AFFIDAVIT OF SERVICE BY MAIL

CITY OF NEW YORK)
STATE OF NEW YORK) SS:
COUNTY OF NEW YORK)

Albert J. Avallone, being duly sworn, deposes and says that he is a member of the Law Offices of Albert J. Avallone & Associates, attorneys for plaintiff herein.

That on the 16th day of November, 2007, he served the within Memorandum of Law in Support of Motion for Judgment by Default upon the following:

USCA-Seabell, Inc.
50 Harrison St.
Hoboken, NJ 07030

by depositing (a) true copy(ies) of the same securely enclosed in (a) postpaid wrapper(s) in a Post Office Box regularly maintained by the United States Government at 551 Fifth Avenue, New York, NY 10176, directed to the above mentioned individual(s) at his (their) respective address(es) above, that (these) being the address(es) within the State designated by him (them) for that purpose upon the preceeding papers in this action or the place where he (they) then kept an office, between such places, there then was and now is a regular communication by mail.

Deponent is over the age of 18 years.



Sworn to before me this
16th day of NOVEMBER, 2007



DOROTHY C. MERITE
Notary Public, State of New York
No. 31-4981887
Qualified in New York County
My Commission Expires _____